

Marine Wildlife Conservation Bill

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B I L L

TO

Amend the law relating to nature conservation and the protection of wildlife in respect of the marine environment; to provide enforcement powers for marine wildlife conservation purposes to competent marine authorities; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Meaning of “marine area” and “marine site of special interest”

- (1) For the purposes of this Act—
- a “marine area” is any part of the sea in or adjacent to England or Wales, or any land covered (continuously or intermittently) by tidal waters in or adjacent to England or Wales; 5
 - a “marine site of special interest” is a marine area in respect of which a notification has effect under this Act.
- (2) A marine area notified as a marine site of special interest— 10
- (a) may extend from the mean low water mark up to the seaward limit of territorial waters;
 - (b) may include the sea bed, the soil under the sea bed to a depth of 30 metres, and the water column.
- (3) A marine site of special interest must not include— 15
- (a) any part of an area of land which has been notified under section 28(1) of the Wildlife and Countryside Act 1981 (c. 69) (sites of special scientific interest);
 - (b) any part of a European marine site, unless the reason for which that part of the marine area is a marine site of special interest is a reason other than that for which it is a European marine site. 20

- (4) In section 28 of the Wildlife and Countryside Act 1981 (c. 69) (sites of special scientific interest), after subsection (10) insert—
- “(11) An area notified under this section must not include any part of an area of land which has been notified as a marine site of special interest under the Marine Wildlife Conservation Act 2002”. 5
- (5) If any part of a marine site of special interest is, after it has been notified as such, included in a European marine site, that part ceases to be a marine site of special interest, unless the reason for which that part is a marine site of special interest is a reason other than that for which it is a European marine site.
- (6) References in this Act to the reasons for which a marine area is a European marine site are references to— 10
- (a) the natural habitat types in Annex I to the Habitats Directive hosted by the site;
- (b) the native species in Annex II to the Habitats Directive hosted by the site; or 15
- (c) the bird species for which the site is classified pursuant to Article 4(1) or (2) of the Wild Birds Directive.

2 General interpretation

- (1) In this Act—
- “the appropriate nature conservation body” means— 20
- (a) in relation to the sea in or adjacent to England, or land covered by tidal waters in or adjacent to England, English Nature;
- (b) in relation to the sea in or adjacent to Wales, or land covered by tidal waters in or adjacent to Wales, the Countryside Council for Wales;
- “the confirming authority” means— 25
- (a) the Secretary of State, as respects a notification or byelaws made by English Nature;
- (b) the National Assembly for Wales, as respects a notification or byelaws made by the Countryside Council for Wales;
- “competent marine authority” means— 30
- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975 (c. 26)) or a Government department;
- (b) the National Assembly for Wales;
- (c) in England, a county, district or London borough council, or the Common Council of the City of London; 35
- (d) in Wales, a county council or county borough council;
- (e) a person holding an office—
- (i) under the Crown,
- (ii) created or continued in existence by a public general Act of Parliament, or 40
- (iii) the remuneration in respect of which is paid out of money provided by Parliament;
- (f) statutory undertaker (meaning the persons referred to in section 262(1), (3) and (6) of the Town and Country Planning Act 1990 (c. 8)); and
- (g) any other public body of any description; 45

- “European marine site” means a European marine site which is included in the European sites register maintained by the Secretary of State or the National Assembly for Wales under the Natural Habitats Regulations;
- “the Habitats Directive” means Council Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora, as amended from time to time; 5
- “the Natural Habitats Regulations” means the Conservation (Natural Habitats, etc.) Regulations 1994 (S.I. 1994/2716), as they have effect from time to time;
- “the sea adjacent to Wales” is to be construed in accordance with Article 6 of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as that Article may be amended or replaced from time to time by Order under the Government of Wales Act 1998 (c. 38); 10
- “the Wild Birds Directive” means Council Directive 79/409/EEC on the conservation of wild birds, as amended from time to time.
- (2) The Secretary of State may by order made by statutory instrument amend the definition of “competent marine authority” in relation to marine sites of special interest which are the subject of a notification by English Nature. 15
- (3) The National Assembly for Wales may by order made by statutory instrument amend the definition of “competent marine authority” in relation to marine sites of special interest which are the subject of a notification by the Countryside Council for Wales. 20
- (4) A statutory instrument containing an order under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament.

3 Notification of marine sites

- (1) If the appropriate nature conservation body is of the opinion that a marine area is a marine site of special interest by reason of any of its flora, fauna, or geological or physiographical features, it may notify that fact. 25
- (2) The confirming authority must, after consulting the appropriate nature conservation body, publish criteria in accordance with which the bodies are to determine whether a marine area is a marine site of special interest for the purposes of this Act. 30
- (3) The confirming authority may, after consulting the appropriate nature conservation bodies, revise criteria published under subsection (2).
- (4) If a body decides to make a notification under subsection (1), it must notify— 35
- (a) the confirming authority;
 - (b) so far as reasonably practicable, each competent marine authority which exercises functions in relation to the marine area;
 - (c) any other competent marine authority which in the opinion of the body should be notified;
 - (d) any other person who the body is directed by the confirming authority to notify. 40
- (5) The body must also publish the notification, on as many occasions as the confirming authority may direct, in—
- (a) the London Gazette;

- (b) at least one local newspaper circulating in an area near to the marine area; and
 - (c) such other publications as the confirming authority may direct.
- (6) A notification under this section has effect from the date on which it is first published in the London Gazette. 5

4 Further provisions about notification

- (1) A notification under section 3 must specify the time (not being less than three months from the date of the giving of the notification) within which representations or objections with respect to it may be made to the confirming authority. 10
- (2) A notification must also—
- (a) specify the flora, fauna, or geological or physiographical features by reason of which the marine area is a marine site of special interest;
 - (b) contain a statement of the appropriate nature conservation body's objectives in relation to the conservation of that flora or fauna, or those features ("the conservation objectives") and the body's views about how the site should be managed for the purpose of achieving those objectives. 15
- (3) The confirming authority, having regard to any representations or objections made under subsection (1), may before the end of the period of nine months beginning with the date on which the notification is first published in the London Gazette, give notice to the appropriate nature conservation body that the notification is— 20
- (a) confirmed;
 - (b) withdrawn; or 25
 - (c) modified;
- and the notice must include a statement of reasons for a withdrawal or modification.
- (4) The notification may be modified by the confirming authority only by— 30
- (a) reducing the size of the marine site of special interest (but so that the site remains within the boundaries of the site in respect of which the notification was made);
 - (b) removing the specification of one or more of the species of flora or fauna, or one or more of the geological or physiographical features;
 - (c) amending the statement relating to the conservation objectives. 35
- (5) A notification ceases to have effect—
- (a) at the end of the period of 28 days beginning with the day on which notice is given to the appropriate nature conservation body that the notification is withdrawn;
 - (b) if no notice is given under subsection (3), at the end of the period of nine months beginning with the date on which the notification is first published in the London Gazette. 40

- (6) A notification has effect as modified by a notice under subsection (3) at the end of the period of 28 days beginning with the day on which notice of the modification is given to the appropriate nature conservation body.
- (7) The appropriate nature conservation body must so far as reasonably practicable notify each person who was notified under section 3(4)(b) to (d)— 5
- (a) of a notice of confirmation, withdrawal or modification under subsection (3); or
 - (b) that no notice has been given under subsection (3) before the end of the period of nine months mentioned in subsection (5)(b).

5 Modification or denotification 10

- (1) The appropriate nature conservation body may notify a modification of a notification—
- (a) at any time after notice confirming the notification is given; or
 - (b) if the notification is modified by the confirming authority, at any time after the notification has effect as modified. 15
- (2) If the appropriate nature conservation body is of the opinion that a marine area is no longer a marine site of special interest by reason of any of the matters specified in section 3(1), a modification under subsection (1) may cancel the notification in respect of the area.
- (3) If the body decides to make a notification under subsection (1), it must notify— 20
- (a) the confirming authority;
 - (b) so far as reasonably practicable, each competent marine authority which exercises functions in relation to the marine area;
 - (c) any other competent marine authority which in the opinion of the body should be notified; 25
 - (d) any other person who the body is directed by the confirming authority to notify.
- (4) The body must also publish the notification, on as many occasions as the confirming authority may direct, in— 30
- (a) the London Gazette;
 - (b) at least one local newspaper circulating in or near to the marine area; and
 - (c) such other publications as the confirming authority may direct.
- (5) A notification under subsection (1), other than a notification which is a cancellation as mentioned in subsection (2), has effect from the date on which it is first published in the London Gazette. 35
- (6) A notification under subsection (1) must specify the time (not being less than three months from the date of the giving of the notification) within which representations or objections with respect to it may be made to the confirming authority. 40

- (7) The confirming authority, having regard to any representations or objections made under subsection (6), may before the end of the period of nine months beginning with the date on which the notification is first published in the London Gazette, give notice to the appropriate nature conservation body that the notification is— 5
- (a) confirmed;
 - (b) withdrawn; or
 - (c) modified;
- and the notice must include a statement of the reasons for a withdrawal or modification. 10
- (8) If a notification under subsection (1) would reduce the size of the site or cancel the notification, the confirming authority may modify that part of the notification only by increasing the size of the marine site (but so that the site remains within the boundaries of the site in respect of which the notification which is proposed to be modified was made). 15
- (9) Apart from that, the confirming authority may modify the notification only by—
- (a) removing or reinstating the specification of one or more of the species of flora or fauna, or one or more of the geological or physiographical features; 20
 - (b) amending the statement relating to the conservation objectives.
- (10) A notification under subsection (1) which is a cancellation as mentioned in subsection (2)—
- (a) has effect, or has effect as modified, at the end of the period of 28 days beginning with the day on which notice is given under subsection (7) to the appropriate nature conservation body that the notification is confirmed or modified; 25
 - (b) if no such notice is given or notice is given that the notification is withdrawn, does not have effect.
- (11) A notification under subsection (1), other than a notification which is a cancellation as mentioned in subsection (2), ceases to have effect— 30
- (a) at the end of the period of 28 days beginning with the day on which notice is given to the appropriate nature conservation body that the notification is withdrawn;
 - (b) if no notice is given under subsection (7), at the end of the period of nine months beginning with the date on which the notification is first published in the London Gazette. 35
- (12) A notification under subsection (1), other than a notification which is a cancellation as mentioned in subsection (2), has effect as modified by a notice under subsection (7) at the end of the period of 28 days beginning with the day on which notice of the modification is given to the appropriate nature conservation body. 40
- (13) The appropriate nature conservation body must so far as reasonably practicable notify each person who was notified under subsection (3)(b) to (d)— 45

- (a) of a notice of confirmation, withdrawal or modification under subsection (7); or
- (b) that no notice has been given under subsection (7) before the end of the period of nine months mentioned in subsection (11)(b).

6 Denotification in relation to European marine sites 5

- (1) If any part of a marine site of special interest ceases to be included in such a site because it is included in a European marine site, the appropriate nature conservation body must notify—
 - (a) the confirming authority;
 - (b) so far as reasonably practicable, each competent marine authority which exercises functions in relation to the site; 10
 - (c) any other competent marine authority which in the opinion of the body should be notified;
 - (d) any other person who the body is directed by the confirming authority to notify. 15
- (2) The body must also publish the notification, on as many occasions as the confirming authority may direct, in—
 - (a) the London Gazette;
 - (b) at least one local newspaper circulating in an area near to the site; and
 - (c) such other publication as the confirming authority may direct. 20
- (3) A notification under this section has effect from the date on which it is published in the London Gazette.

7 Installation of boundary markers

- (1) The appropriate nature conservation body may install markers indicating the boundaries of a marine site of special interest. 25
- (2) Markers may be installed at any time after a notification has effect.
- (3) If a notification ceases to have effect, or has effect as modified, the appropriate nature conservation body must if necessary and as soon as reasonably practicable remove or alter markers installed under this section.
- (4) Before doing anything under this section, the appropriate nature conservation body must obtain the consent of the owner of the land or sea bed on which a marker is to be installed. 30
- (5) Nothing in this section exempts the appropriate nature conservation body from a statutory requirement to obtain any other consent (in particular any consent which may be required under section 34 of the Coast Protection Act 1949 (c. 74) or section 1 of the protection of Wrecks Act 1973 (c. 33)). 35

8 Duty to maintain a register of marine sites of special interest

- (1) Each appropriate nature conservation body must maintain, in such form as it thinks fit, a register of marine sites of special interest.

- (2) The register under subsection (1) must include the co-ordinates of each marine site of special interest and a chart illustrating its boundaries.
- (3) A copy of the register maintained under subsection (1) must be available for public inspection at all reasonable hours and free of charge.

9 Competent marine authorities: duties

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- (1) It shall be the duty of a competent marine authority in exercising its functions to take reasonable steps, consistent with the proper exercise of those functions, to further the conservation of the flora, fauna, or geological or physiographic features by reason of which a marine area is a marine site of special interest.
- (2) This subsection applies to any operation—
 - (a) which a competent marine authority proposes to undertake; or
 - (b) to which a competent marine authority proposes to give its consent,
 if in the opinion of the competent marine authority the operation is likely to damage any of the flora, fauna or geological or physiographical features by reason of which a marine area is a marine site of special interest.
- (3) If subsection (2) applies, the competent marine authority must before deciding to undertake the operation or give consent to the operation give notice to the appropriate nature conservation body.
- (4) The competent marine authority must not decide to undertake the operation or give consent to it before whichever is the earliest of—
 - (a) the end of the period of 28 days beginning with the day on which notice is given under subsection (3); or
 - (b) the receipt of representations from the appropriate nature conservation body.
- (5) In deciding whether to undertake the operation or give consent to it the competent marine authority must consider any representations made by the appropriate nature conservation body and must notify the appropriate nature conservation body of how (if at all) it has taken into account the representations.
- (6) To the extent that the competent marine authority does not take into account the representations of the appropriate nature conservation body it must, in undertaking or giving consent to the operation, do so in such a way as to give rise to as little damage as is reasonably practicable in all the circumstances to the flora, fauna or geological or physiographical features by reason of which the site is of special interest.
- (7) Subsection (2) does not apply to an operation which in the opinion of the competent marine authority is an emergency operation, but in that case the competent marine authority must within 7 days of undertaking or consenting to the emergency operation notify the appropriate nature conservation body of the operation.
- (8) A competent marine authority must take reasonable steps to exercise its functions in accordance with a management scheme established under section 10.

- (9) Subsection (2) does not apply to an operation the undertaking of which in the opinion of the competent marine authority concerned is in accordance with—
- (a) a management scheme established under section 10; or
 - (b) a management scheme established under the Natural Habitats Regulations (management schemes for European marine sites). 5
- (10) Nothing in this section has effect in relation to the exercise of a function or the undertaking of an operation to the extent that the Secretary of State certifies that it is requisite or expedient in the interests of national security that it should not have effect in relation to the exercise of the function or the undertaking of the operation. 10

10 Management schemes

- (1) Any one or more of the bodies mentioned in subsection (2) may establish a management scheme for a marine site of special interest.
- (2) The bodies are—
- (a) an appropriate nature conservation body; 15
 - (b) the Environment Agency;
 - (c) in England, a county, district or London borough council, or the Common Council of the City of London;
 - (d) in Wales, a county council or county borough council;
 - (e) any water undertaker or sewerage undertaker; 20
 - (f) any navigation authority, within the meaning of section 221(1) of the Water Resources Act 1991 (c. 57);
 - (g) any harbour authority within the meaning of section 57 of the Harbours Act 1964 (c. 40);
 - (h) the general lighthouse authority, or a local lighthouse authority, within the meaning of section 193 of the Merchant Shipping Act 1995 (c. 21); 25
 - (i) any local fisheries committee provided for under section 1 of the Sea Fisheries Regulation Act 1966 (c. 38).
- (3) A management scheme must set out how the functions of the body or bodies making the scheme (including, in the case of an appropriate nature conservation body, the function of making byelaws with respect to the site) are to be exercised so as to secure the achievement of the conservation objectives. 30
- (4) Only one management scheme may be made for each marine site of special interest.
- (5) Before making a management scheme under subsection (1), the body or bodies making it must consult— 35
- (a) the confirming authority;
 - (b) so far as reasonably practicable, each competent marine authority which exercises functions in relation to the site;
 - (c) any other competent marine authority which in the opinion of the body or bodies should be consulted; 40
 - (d) any other person who in the opinion of the body or bodies is likely to be affected by the management scheme.

- (6) If any part of a marine site of special interest falls within a European marine site and a management scheme is established for the European marine site under the Natural Habitats Regulations—
- (a) no management scheme may be established under this section for the marine site of special interest; and 5
 - (b) a management scheme which is already established under this section ceases to have effect.
- (7) A management scheme established for a European marine site may take into account the conservation objectives for a marine site of special interest, but only to the extent that securing those objectives is compatible with securing compliance with the Habitats Directive as required by the Natural Habitats Regulations. 10
- (8) A management scheme is to be reviewed from time to time and at least once in every five years.
- (9) A management scheme may be amended at any time. 15
- (10) Unless an appropriate nature conservation body is the body, or one of the bodies, which establishes a management scheme, as soon as a scheme has been established, or is amended, a copy of it must be sent by the body or bodies concerned to the appropriate nature conservation body.
- (11) The appropriate nature conservation body must publish a management scheme— 20
- (a) established or amended by it under this section; or
 - (b) a copy of which is sent to it as established or amended under this section.
- (12) A management scheme has effect, or has effect as amended, from the date on which it is first published under subsection (11). 25
- (13) The Secretary of State may by order made by statutory instrument amend subsection (2) in relation to marine sites of special interest which are the subject of a notification by English Nature.
- (14) The National Assembly for Wales may by order made by statutory instrument amend subsection (2) in relation to marine sites of special interest which are the subject of a notification by the Countryside Council for Wales. 30
- (15) A statutory instrument containing an order under subsection (13) is subject to annulment in pursuance of a resolution of either House of Parliament.
- 11 Directions in relation to management scheme 35**
- (1) If no management scheme has been established for a marine site of special interest, the confirming authority may give directions to any one or more of the bodies mentioned in section 10(2) as to the establishment of a management scheme.
- (2) Directions under subsection (1) may, in particular— 40
- (a) require conservation measures specified in the direction to be included in the scheme;

- (b) appoint one of the bodies to which the direction is given to co-ordinate the establishment of the scheme;
- (c) set time limits within which any steps are to be taken;
- (d) provide that the approval of the confirming authority is required before the scheme is established; 5
- (e) require the body or bodies to which the direction is given to supply to the confirming authority such information concerning the establishment or operation of the scheme as may be specified in the direction.
- (3) The confirming authority may give directions to the body or bodies which established a management scheme as to the amendment of the scheme, either generally or in any particular respect. 10
- (4) Any direction under this section must be in writing and may be varied or revoked by a further direction.
- 12 Sustainable development** 15
- In the exercise of any function under this Act a person or body must have regard to the desirability of contributing to the achievement of sustainable development.
- 13 Byelaws for protection of marine sites of special interest**
- (1) The appropriate nature conservation body may, with the consent of the confirming authority, make byelaws for the protection of a marine site of special interest. 20
- (2) Subsections (2) to (4) and (10) and (11) of section 37 of the Wildlife and Countryside Act 1981 (byelaws for protection of marine nature reserves) have effect in relation to byelaws made under this section as respects a marine site of special interest as they have effect in relation to byelaws made under that section as respects a marine nature reserve. 25
- (3) Sections 236 to 238 of the Local Government Act 1972 (c. 70) (which relate to the procedure for making byelaws, authorise byelaws to impose fines and provide for the proof of byelaws in legal proceedings) have effect in relation to byelaws made under this section as if the appropriate nature conservation body were a local authority within the meaning of that Act. 30
- (4) In relation to byelaws made under this section, those sections apply subject to any modifications made by the confirming authority by regulations made by statutory instrument (including modifications increasing the maximum fines which the byelaws may impose). 35
- (5) A statutory instrument containing regulations made by the Secretary of State under subsection (4) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The confirming authority may, after consultation with the appropriate nature conservation body, direct the body— 40
- (a) to revoke any byelaws previously made under this section; or

- (b) to make such amendments of byelaws so made as may be specified in the direction.
- (7) The appropriate nature conservation body has power to enforce byelaws made under this section.
- (8) Except with the consent of the Director of Public Prosecutions, proceedings for an offence under byelaws made under this section may not be taken other than by the appropriate nature conservation body. 5
- (9) Nothing in byelaws made by virtue of this section shall interfere with the exercise of any functions of a competent marine authority, any functions conferred by or under an enactment (whenever passed) or any right of any person (whenever vested). 10

14 Damage or destruction in a marine site

- (1) A person is guilty of an offence if he—
 - (a) intentionally or recklessly damages or destroys any of the flora, fauna, or geological or physiographical features by reason of which a marine area is a marine site of special interest; and 15
 - (b) knew that what he damaged or destroyed was within a marine site of special interest.
- (2) Subsection (1) does not have effect in relation to a competent marine authority acting in the exercise of its functions. 20
- (3) It is a defence for a person charged with an offence under subsection (1) to prove that the damage or destruction was the incidental result of a lawful operation and could not reasonably have been avoided.
- (4) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to a fine not exceeding £20,000; 25
 - (b) on conviction on indictment, to a fine.
- (5) In determining the amount of any fine to be imposed on a person convicted of an offence under this section, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to that person in consequence of the offence. 30
- (6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
 - (a) any director, manager, secretary or other similar officer of the body corporate; or 35
 - (b) any person who was purporting to act in any such capacity,

he, as well, as the body corporate, is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (7) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. 40

- (8) An offence under this section is for the purposes of conferring jurisdiction to be deemed to have been committed in any place where the offender is found or to which he is first brought after the commission of the offence.

15 Application to Crown

- (1) This Act binds the Crown, except that nothing in this Act affects Her Majesty in her private capacity. 5
- (2) Byelaws made under section 13 may apply to Crown land only if the appropriate authority (within the meaning of section 101(11) of the National Parks and Access to the Countryside Act (1949 c. 97)) consents.
- (3) Crown land means land an interest in which— 10
- (a) belongs to Her Majesty in the right of the Crown or the Duchy of Lancaster;
 - (b) belongs to the Duchy of Cornwall;
 - (c) belongs to a government department; or
 - (d) is held in trust for Her Majesty for the purposes of a government department. 15
- (4) The Crown is not criminally liable as a result of any provision made by or under this Act.
- (5) Subsection (4) does not affect the application of any provision made by or under this Act in relation to persons in the public service of the Crown. 20

16 Expenses

There shall be paid out of money provided by Parliament—

- (a) any expenses of the Secretary of State under this Act; and
- (b) any increase attributable to this Act of the sums payable under any other Act. 25

17 Short title, extent and commencement

- (1) This Act may be cited as the Marine Wildlife Conservation Act 2002.
- (2) This Act extends to England and Wales only.
- (3) This Act comes into force on such day as the Secretary of State (as regards England) or the National Assembly for Wales (as regards Wales) may by order made by statutory instrument appoint. 30

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A

B I L L

To amend the law relating to nature conservation and the protection of wildlife in respect of the marine environment; to provide enforcement powers for marine wildlife conservation to competent marine authorities; and for connected purposes.

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